

Idaho Petroleum Clean Water Trust Fund

In 1988, the U.S. Environmental Protection Agency (EPA) imposed financial responsibility requirements on owners and operators of underground storage tanks (USTs). Facing these requirements and the mandatory technical operating standards to upgrade their tank systems, petroleum dealers and others feared hundreds of petroleum retailers would be forced out of business because they could not obtain or afford liability insurance for accidental releases or contamination from their storage tanks.

In 1990, the Legislature created the Idaho Petroleum Clean Water Trust Fund. The Fund was designed to provide affordable liability insurance coverage for Idaho petroleum storage tank owners and operators to meet the federal Environmental Protection Agency financial responsibility requirements.

The 1990 Trust Fund legislation created the IPCW Trust Fund as a non-profit insurance organization regulated by the state Department of Insurance. The Fund operates by issuing contracts of insurance to petroleum storage tank owners and operators who apply for insurance and satisfy the statutory eligibility requirements and the Trust Fund's underwriting procedures. The payment of claims from the Fund is available for corrective action (i.e. environmental cleanup) costs and compensation of third parties for bodily injury or property damage due to accidental releases from covered petroleum storage tank where the accidental release commenced during the policy period. As stated in the Trust Fund statute, "this fund shall only be available for costs incurred as to those tanks that are covered by a contract of insurance between the owner or operator and the trust fund." I.C. § 41-4902 (2)

The Idaho Petroleum Clean Water Trust Fund dba the Petroleum Storage Tank Fund (PSTF) was licensed and registered with the Idaho Department of Insurance on April 24, 1991, as a private, non-profit corporate entity. IPCWTF is authorized to do business as a specialty insurance company with the powers and privileges of a non-profit corporate entity operating within the state.

As established by the Trust Fund Act, the IPCWTF issues eligible tank owners and operators insurance contracts that meet the federally mandated financial responsibility requirements for corrective action and payment of valid third-party claims caused by leaking petroleum tanks. Refiner's terminals or tanks directly supplied by a pipeline are not eligible for coverage. I.C. 41-4912 (2)

The Fund does not act as a general cleanup fund. For a loss to be covered it must occur during the policy period; the loss must originate from an insured petroleum storage tank system; and the policyholder must comply with the policy conditions. The limits of liability for tanks range from \$100,000 per occurrence/\$100,000 annual aggregate for heat-

ing tanks, farm tanks and residential tanks to \$1,000,000 per occurrence/\$2,000,000 annual aggregate for owners or operators of more than 101 covered tanks. I.C. § 41-4906.

The Petroleum Storage Tank Fund (PSTF) provides the underwriting functions necessary to issue IPCW Trust Fund policies and service claims. The Trust Fund is operated, through a management contract, by the State Insurance Fund. I.C. § 41-4904 (2) The Trust Fund itself does not have any employees. The operating budget for the Trust Fund is approximately \$1.6 to \$1.7 million a year. Assets consist of investments made by the state treasurer.

To provide the funding for the Trust Fund's operations, the legislature imposed a transfer fee of 1 cent per gallon on all petroleum products delivered or stored within Idaho. The Trust Fund currently receives 20 percent (or 1/5 of one cent per gallon) of the collected transfer fees. This percentage represents the "off highway" fuel use and the imposition of the fee on other non-highway petroleum products, such as heating oil. I.C. § 41-4910 Owners or operators of storage tanks pay a policy fee of \$25 per tank. I.C. § 41-4909 The transfer fee stops when the director of the Department of Insurance certifies the unencumbered balance in the Trust Fund equals \$35,000,000 and starts when it drops to \$25,000,000. I.C. § 41-4909 (10)

The unencumbered surplus at the end of April was \$21,671,501.82. The unencumbered surplus represents assets less claims reserves and operating liabilities. The surplus provides protection against unexpected losses and is a source of investment income against claims and operating expenses. Policy fees paid by tank owners/operators amount to approximately \$100,000 per year. The Trust Funds share of the transfer fees, estimated at approximately \$1.9 million per year, may not be sufficient to cover operating and claims expenses. If the surplus drops too low the investment income earned would not be sufficient to provide the difference. This could cause the slow "burn" of the surplus amount causing the Trust Fund to eventually become financially unsound.

The Trust Fund currently has 871 policies in force covering 4,096 tanks on 1415 sites.